

Securities and Exchange Commission

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(ii) Its public representations of policies;

(iii) Its historical development; and

(iv) An appropriate resolution of its board of directors, which resolution or action has been recorded contemporaneously in its minute books or comparable documents; and

(7) Its board of directors has adopted a written investment policy with respect to the issuer's capital preservation investments.

(b) For purposes of this section:

(1) All assets shall be valued in accordance with section 2(a)(41)(A) of the Act (15 U.S.C. 80a-2(a)(41)(A));

(2) The percentages described in this section are determined on an unconsolidated basis, except that the issuer shall consolidate its financial statements with the financial statements of any wholly-owned subsidiaries;

(3) *Board of directors* means the issuer's board of directors or an appropriate person or persons performing similar functions for any issuer not having a board of directors;

(4) *Capital preservation investment* means an investment that is made to conserve capital and liquidity until the funds are used in the issuer's primary business or businesses;

(5) *Controlled primarily* means controlled within the meaning of section 2(a)(9) of the Act (15 U.S.C. 80a-2(a)(9)) with a degree of control that is greater than that of any other person;

(6) *Investment made pursuant to a collaborative research and development arrangement* means an investment in an investee made pursuant to a business relationship which:

(i) Is designed to achieve narrowly focused goals that are directly related to, and an integral part of, the issuer's research and development activities;

(ii) Calls for the issuer to conduct joint research and development activities with the investee or a company controlled primarily by, or which controls primarily, the investee; and

(iii) Is not entered into for the purpose of avoiding regulation under the Act;

(7) *Investments in securities* means all securities other than securities issued by majority-owned subsidiaries and companies controlled primarily by the issuer that conduct similar types of

businesses, through which the issuer is engaged primarily in a business other than that of investing, reinvesting, owning, holding, or trading in securities;

(8) *Other investment* means an investment in securities that is not a capital preservation investment; and

(9) *Research and development expenses* means research and development expenses as defined in FASB Statement of Financial Accounting Standards No. 2, Accounting for Research and Development Costs, as currently in effect or as it may be subsequently revised.

[68 FR 37052, June 20, 2003]

§ 270.3c-1 Definition of beneficial ownership for certain 3(c)(1) funds.

(a) As used in this section:

(1) The term *Covered Company* means a company that is an investment company, a Section 3(c)(1) Company or a Section 3(c)(7) Company.

(2) The term *Section 3(c)(1) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(1) of the Act [15 U.S.C. 80a-3(c)(1)].

(3) The term *Section 3(c)(7) Company* means a company that would be an investment company but for the exclusion provided by section 3(c)(7) of the Act [15 U.S.C. 80a-3(c)(7)].

(b) For purposes of section 3(c)(1)(A) of the Act [15 U.S.C. 80a-3(c)(1)(A)], beneficial ownership by a Covered Company owning 10 percent or more of the outstanding voting securities of a Section 3(c)(1) Company shall be deemed to be beneficial ownership by one person, *provided that*:

(1) On April 1, 1997, the Covered Company owned 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company or non-voting securities that, on such date and in accordance with the terms of such securities, were convertible into or exchangeable for voting securities that, if converted or exchanged on or after such date, would have constituted 10 percent or more of the outstanding voting securities of the Section 3(c)(1) Company; and

(2) On the date of any acquisition of securities of the Section 3(c)(1) Company by the Covered Company, the value of all securities owned by the

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Covered Company of all issuers that are Section 3(c)(1) or Section 3(c)(7) Companies does not exceed 10 percent of the Covered Company's total assets.

[62 FR 17529, Apr. 9, 1997]

§ 270.3c-2 Definition of beneficial ownership in small business investment companies.

For the purpose of section 3(c)(1) of the Act, beneficial ownership by a company owning 10 per centum or more of the outstanding voting securities of any issuer which is a small business investment company licensed to operate under the Small Business Investment Act of 1958, or which has received from the Small Business Administration notice to proceed to qualify for a license, which notice or license has not been revoked, shall be deemed to be beneficial ownership by one person (a) if and so long as the value of all securities of small business investments companies owned by such company does not exceed 5 per centum of the value of its total assets; or (b) if and so long as such stock of the small business investment company shall be owned by a state development corporation which has been created by or pursuant to an act of the State legislature to promote and assist the growth and development of the economy within such State on a state-wide basis: *Provided*, That such State development corporation is not, or as a result of its investment in the small business investment company (considering such investment as an investment security) would not be, an investment company as defined in section 3 of the Act.

(Sec. 6, 74 Stat. 412; 15 U.S.C. 80a-6)

[33 FR 11451, Aug. 13, 1968]

§ 270.3c-3 Definition of certain terms used in section 3(c)(1) of the Act with respect to certain debt securities offered by small business investment companies.

The term *public offering* as used in section 3(c)(1) of the Act shall not be deemed to include the offer and sale by a small business investment company, licensed under the Small Business Investment Act of 1958, of any debt security issued by it which is (a) not convertible into, exchangeable for, or ac-

companied by any equity security, and (b) guaranteed as to timely payment of principal and interest by the Small Business Administration and backed by the full faith and credit of the United States. The holders of any securities offered and sold as described in this section shall be counted, in the aggregate, as one person for purposes of section 3(c)(1) of the Act.

[37 FR 7590, Apr. 18, 1972]

§ 270.3c-4 Definition of "common trust fund" as used in section 3(c)(3) of the Act.

The term *common trust fund* as used in section 3(c)(3) of the Act (15 U.S.C. 80a-3(c)(3)) shall include a common trust fund which is maintained by a bank which is a member of an affiliated group, as defined in section 1504(a) of the Internal Revenue Code of 1954 (26 U.S.C. 1504(a)), and which is maintained exclusively for the collective investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided*, That:

(a) The common trust fund is operated in compliance with the same State and Federal regulatory requirements as would apply if the bank maintaining such fund and any other contributing banks were the same entity; and

(b) The rights of persons for whose benefit a contributing bank acts as trustee, executor, administrator, or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group.

(15 U.S.C. 80a-6(c), 80a-37(a))

[43 FR 2393, Jan 17, 1978]

§ 270.3c-5 Beneficial ownership by knowledgeable employees and certain other persons.

(a) As used in this section:

(1) The term *Affiliated Management Person* means an affiliated person, as such term is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)], that manages the investment activities of a Covered Company. For purposes of this